

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) BEFORE THE CHIEF PROCUREMENT
) OFFICER FOR CONSTRUCTION
)
)

IN THE MATTER OF: CONTROVERSY

) ORDER APPROVING SETTLEMENT
)

CANNON CONSTRUCTION COMPANY

) CASE NO. 2011-007
)
)

v.

SPARTANBURG COMMUNITY COLLEGE

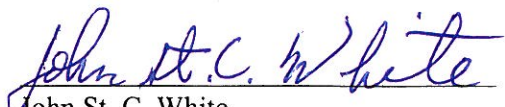
) POSTING DATE:
) NOVEMBER 8, 2010
)

GAINES BUILDING RENOVATIONS
STATE PROJECT NO. H59-9978-JM
_____)

This matter came before the Chief Procurement Officer for Construction (CPOC) pursuant to a request by Cannon Construction Company (Cannon), under the provisions of section 11-35-4230 of the South Carolina Consolidated Procurement Code, for an administrative review of a contract controversy regarding the Gaines Building Renovation ("the Project") for Spartanburg Community College (The College). The request for resolution of a contract controversy is attached as Exhibit A.

DECISION

On November 5, 2010, the parties submitted to the CPOC a settlement agreement which the CPOC approved (after first determining the settlement agreement to be appropriate). This Settlement Agreement is attached as Exhibit B. Based on the parties' mutual good faith commitment to perform as set forth in the settlement agreement, the CPOC dismisses the request for resolution of a contract controversy.


John St. C. White

Chief Procurement Officer for Construction

8 Nov 2010

Date



September 21, 2010

Via: Email

Mr. John St. C. White, PE
1201 Main Street, Suite 600
Columbia, SC 29201

Re: Spartanburg Community College
Gaines Building Renovations
OSE Project No. HH59-9978-JM
McMillan Pazdan Smith Project No. 07131 1-7

Dear Mr. White,

I wish to appeal a decision of McMillan Pazdan Smith Architects/Spartanburg Community College. I will try to make this brief, but I want to make sure I give you enough detail to help explain this situation.

Issue 1 General Conditions Cost

The first issue is over extended general conditions cost. Our price for the CNA Lab was \$151,632.00 including \$30,065.00 for general conditions. We removed the cost for general conditions for the CNA Lab at the request of Ed Reeves and Gable Stubbs of McMillan Pazdan Smith Architects. At that time, I was influenced to believe that the new Plaza Area was going to be constructed and added to our contract. I signed a change order for the CNA Lab for with the assurance that the cost for general conditions would be included in the Plaza change order which would cover both. I received the Plaza Area design and provided the cost to McMillan Pazdan Smith Architects and Spartanburg Community College. I made every effort to make this project affordable for the Owner including reducing my fee by 50% of which contractually I was entitled to. Had this project been approved, we would have received additional money to cover our general conditions and supervision of the CNA Lab. If you look at our backup for change order one, you will see that the cost we originally included in change order request number one for general conditions was removed. (See page 4 Exhibit A) If I had not been promised the change order for the Plaza Area, I would have never agreed to delete the General Conditions cost from the CNA Lab change order. We are entitled to \$35,748.00. (See Exhibit B) I have attached an email correspondence between Gable Stubbs and me regarding the deletion of general conditions from the CNA Lab. In it you will see he assures me "We will make sure that you are not left hanging out there." (See Exhibit C)

Issue 2. Liquidated Damages

We agree on the following dates:

Original substantial completion date

Feb. 22, 2010

Final completion date

March 24, 2010

Revised substantial completion date per CO 1

April 23, 2010

Revised final completions date per CO 1

May 22, 2010

Actual substantial completion date

May 4, 2010

Actual final completion

June 21, 2010

Date Owner Occupied Classrooms

March 22, 2010

Date Owner Occupied Classrooms

May 4, 2010

On January 26, we were directed to stop construction on the CNA Lab and concentrate on completing the classrooms. On February 22, Mr. Ray Switzer requested to have the Classrooms completed for Continuing Ed the week of March 29 – April 2 and the CNA Lab area completed for the Continuing Ed people to move June 1. (See Exhibit D) We re-scheduled our work to accommodate this request. We turned both areas over ahead of this. This directive should entitle us to an extension of time of 40 calendar days for substantial completion to June 1.

We were informed on March 9 that the Owner had decided not to proceed with the Plaza project and were directed to proceed with the CNA Lab construction. This was a delay of thirty three days. This delay should entitle us to an extension of 33 calendar days for substantial completion to July 4. Therefore, there should be no liquidated damages charged to this project.

Issue 3 Change order requests approved and completed.

I have attached a change order log and each change order request. This work was approved and has been completed. MPS wanted to wait until the project was complete to lump all these changes in to one change order. I had no problem with this, but now it appears I should not have done any work outside the original scope with a signed change order.

Questions I would ask.

1. Was the first proposal for the CNA lab \$151,632.00?
2. Did MPS ask Cannon Construction Co., Inc. to delete the cost for general conditions?
3. Did MPS tell Cannon Construction Co., Inc. that the school was going to re-work the Plaza area and the cost for general conditions would be included in that change order to cover both?
4. Did Gable Stubbs assure Cannon Construction Co., Inc. that they would not be left hanging out there on this issue?
5. Was the school planning on a Plaza project?
6. Did Cannon Construction Co., Inc. provide a change order request for this project?
7. Did Cannon Construction Co., Inc. offer to reduce the fee to assist the school in making the project more affordable?
8. Did the cost for the plaza include general conditions cost for Cannon Construction Co., Inc.?
9. Was the project approved?
10. Since the project was not approved, on what basis is MPS/Spartanburg Community College denying Cannon Construction Co., Inc. reimbursement for general conditions submitted with change order one?
11. Did MPS direct Cannon Construction Co., Inc. to stop work on the CNA Lab pending the change order on the Plaza area?
12. Did Ray Switzer direct Cannon Construction Co., Inc. to treat the project as separate phases and request each phase be completed at different times?
13. Did Spartanburg Community College occupy the areas on time as requested?
14. Why is Cannon Construction Co., Inc. being denied an extension of time?
15. If there are liquidated damages, why has MPS/Spartanburg Community College not provided this detail as requested?

I feel we are entitled to the change orders as requested and an extension of time. I hope and pray you feel the same. I regret having to get you involved, but have been left no choice. I will not walk away from this issue. I still believe it is never too late to do the right and honest thing. I am very proud of Cannon Construction Co., Inc.'s and my personal reputation. I have worked long and hard to ensure that I can sleep at night knowing that I put in an honest days work and have treated everyone honestly and fairly. I can walk down the street and hold my head up high. I believe in doing things on the level and being square with all I do.

Mr. White, it is sad times when we no longer can take people for their word and commitment. I have been in construction for 25 years. I have seen my share of good and bad projects, good and bad Owners, good and bad Architects. I am used to working as part of a team with Owner and Architect. It has become very evident that this is not the case on this project. I now realize how I must deal with state contracts. I can assure you as I move forward, all the I's and T's will be dotted and crossed. I am a small business and with the current economic times, we as well as everyone are struggling to keep our doors open. God help us all.

I look forward to getting your response. Please inform me of the next step in this process.

Sincerely,
Cannon Construction Co., Inc.

Hank Cannon

Hank Cannon
President

November 5, 2010

SETTLEMENT AGREEMENT

STATE PROJECT: H59-9978-JM
Project Name: Gains Building Renovation
Agency; Spartanburg Community College

Parties:

Spartanburg Community College
Mr. L. Ray Switzer, Director
Physical Plant
Spartanburg Community College
I-85 New Cut road
Spartanburg South Carolina 29303

Cannon Construction Company
Mr. Hank Cannon
Cannon Construction Co., Inc
PO Box 25576
Greenville, SC 29616

The following dispute issues have agreement by both parties based upon on negotiations using the process of mediation. The negotiation completed by the parties on November 5, 2010 at the Office of the State Engineer concern the following agreed upon issues:

1. General Conditions for the project in Dispute is agreed by both parties to be a total of Twelve Thousand Five hundred dollars (\$12,500.00):
2. Liquidated Damages assessment is for a total of eleven days from April 23, 2010 contract date of substantial completion to May 4, 2010. Total assessment is agreed to be Five thousand five hundred dollars (\$5, 500.00):
3. Outstanding Change Order request items and approved changes are in agreement for a total of thirteen Thousand Seven Hundred and Fifty One dollars (\$13,751.00):

Spartanburg Community College obligation to Cannon Construction Company based on the above agreement totals is Twenty Thousand Seven Hundred and fifty one dollars (\$20, 751.00) after assessment of liquidated damages.

Mediation continued:

Cannon Construction Company agrees and desires to not bid projects or seek construction work with Spartanburg Community College.

It is agreed that any dispute regarding this agreement shall be governed and resolved pursuant to Section 4.5 of the Standard Supplementary Conditions 008111-OSE as amended, edition 2008

STATE PROJECT: H59-9978-JM
Project Name: Gains Building Renovation
Agency; Spartanburg Community College

It is agreed that this Settlement Agreement will be submitted to the State Engineer, acting as the Chief Procurement Officer for final approval and will become effective upon his signature

The above issues are mutually acceptable by the parties as noted and the following represents that the agreement is effective as executed by all parties.

Spartanburg Community College

By: _____

Title: _____

Date: _____

[Signature]
Executive V.P.
11/5/10

Cannon Construction Company

By: _____

Title: _____

Date: _____

[Signature]
PRESIDENT
11/5/10

I APPROVE

[Signature]

John St. C. White, P. E.

South Carolina State Engineer

Chief Procurement Officer

November 5, 2010

CC: Switzer, Cannon, White

C:\Mediation\H59-9978-JM Gaines Building\Settlement Agreement